

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION**

CAROL FILIAULT, individual and on)
Behalf of All other Person Similarly)
Situating,)
)
Plaintiff,)
)
v.)
)
JIMINY PEAK MOUNTAIN)
RESORT, LLC,)
)
Defendant,)
_____)

Civil no. _____

DEFENDANT’S NOTICE OF REMOVAL OF CIVIL ACTION

Defendant, Jiminy Peak Mountain Resort, LLC, by and through its undersigned counsel, Sheehan Phinney Bass & Green, P.A., and pursuant to 28 U.S.C. §§ 1441 and 1446, respectfully notices the removal of the above-captioned case to the United States District Court for the District of Massachusetts, Western Division, from the Berkshire Superior Court. In support thereof, Defendant states as follows:

1. On or about October 29, 2018, Plaintiff, on behalf of herself and other alleged class members, filed a Class Action Complaint in Berkshire Superior Court naming Jiminy Peak Mountain Resort, LLC as Defendant (the “State Court Action”). A copy of the Class Action Complaint was first received via service of process on December 11, 2018. In accordance with 28 U.S.C. § 1446(a), copies of the Summons and Complaint for the State Court Action are appended hereto as Exhibit A.

2. This Notice of Removal, filed within the thirty-day period prescribed by 28 U.S.C. § 1446, is timely.

3. The State Court Action is subject to removal pursuant to 28 U.S.C. §§ 1441, 1331 (federal question jurisdiction) and 1337 (supplemental jurisdiction). This civil action involves a federal question arising under Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201 et seq., (“FLSA”) and supplemental state and common law claims.

THE PARTIES

4. According to the State Court Action, Plaintiff was at the time of filing, and is currently, a resident of the Town of Lanesborough, Commonwealth of Massachusetts, within the Western Division.

5. Defendant was at the time of filing, and is currently, a limited liability company existing under the laws of the Commonwealth of Massachusetts with a principal place of business in 37 Corey Road, Hancock, Massachusetts.

THE STATE COURT ACTION

6. Plaintiff, on behalf of herself and alleged class members, asserts claims against Defendant for alleged violations of the FLSA. Plaintiff has additionally asserted, on behalf of herself and alleged class members, state law claims under the Massachusetts Wage Act (M.G.L. c. 151 § 1A et seq.) and a common law claim for Quantum Meruit/Unjust Enrichment.

THIS COURT’S REMOVAL JURISDICTION

7. This case falls within the Court’s federal question and supplemental jurisdiction under 28 U.S.C. §§ 1331 and 1337. Specifically, Plaintiff has pled a claim under the FLSA and attendant state law claims that allegedly arise from the same case and controversy as the claim conferring federal question jurisdiction.

8. The timing requirements of 28 U.S.C. §1446 have been satisfied in that this Notice of Removal has been filed within thirty (30) days after receipt of the Complaint by Defendant. Accordingly, the time for filing this Notice of Removal has not expired under 28 U.S.C. § 1446(b).

9. A true and accurate copy of this Notice of Removal is being served upon Plaintiff as required under 28 U.S.C. § 1446(d).

10. A true and accurate copy of this Notice of Removal is also being filed promptly with the Clerk of the Berkshire Superior Court, in accordance with 28 U.S.C. § 1446(d) and Local Rule 81.1

11. In the event Plaintiff challenges the removal of this matter, Defendant requests the opportunity to submit briefs and be heard at oral argument in support of its position that removal is proper.

WHEREFORE, Defendant hereby removes this action, currently pending in Berkshire Superior Court, to this honorable Court and respectfully requests that this Court assume jurisdiction over this action and henceforth that this action be placed upon the docket of this Court for further proceedings, as though this case had originally been initiated in this Court.

Respectfully submitted,

JIMINY PEAK MOUNTAIN RESORT, LLC

By Its attorneys,
**SHEEHAN PINEY BASS & GREEN,
PROFESSIONAL ASSOCIATION**

Dated: December 19, 2018

/s/ Mark J. Ventola
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CERTIFICATE OF SERVICE

I hereby certify that, on this 19th day of December, 2018, a copy of the foregoing was served upon Plaintiff's Counsel of Record through via first class mail, postage prepaid, to:

Jeffrey S. Morneau, Esq.
Lan T. Kantany, Esq.
CONNOR & MORNEAU, LLP
273 State Street, Second Floor
Springfield, Massachusetts 01103

/s/ Mark J. Ventola
Mark J. Ventola